

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-209-C - ORDER NO. 2001-647

JULY 10, 2001

IN RE: Application of BellSouth)	ORDER GRANTING
Telecommunications, Inc. to Provide In-)	MOTION TO ACCEPT
Region InterLATA Services Pursuant to)	COPIES ON CD-ROM
Section 271 of the Telecommunications Act)	AND RULING ON
of 1996.)	MOTIONS TO
)	RECONSIDER
)	SCHEDULING

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Motion from BellSouth Telecommunications, Inc. (BellSouth) requesting permission from the Commission to file certain documents on CD-ROM in lieu of paper copies in this matter. Additionally, NewSouth Communications (NewSouth) and the South Carolina Cable Association (Cable Association) filed a Motion to Reconsider Scheduling Decision and NuVox Communications, Inc. (NuVox) and United Telephone Company of the Carolinas and Sprint Communications Company, L.P. (collectively, Sprint) filed letters in support of the Motion to Reconsider Scheduling Decision.

Motion to Accept Copies on CD-ROM in Lieu of Paper Copies

BellSouth asserts in its Motion to Accept Copies on CD-ROM in lieu of paper copies, that the filing of certain documents in this docket on CD-ROM will foster efficiency in the filing process. 26 S.C. Code Ann. Regs. 103-832 (Supp. 2000) provides pleadings to be filed in one original and ten (10) copies, unless otherwise specified by the

Division Director. BellSouth requests that the Commission accept one (1) original and one (1) paper copy of all testimony and exhibits filed in support of the Notice, along with an additional twenty-four (24) copies of all such testimony and exhibits on CD-ROM. Moreover, BellSouth believes no prejudice will occur if its request is granted by the Commission.

Motion to Reconsider Scheduling Decision by NewSouth Communications and South Carolina Cable Television Association

On June 4, 2001, this Commission issued Order No. 2001-532, wherein it granted BellSouth's request to set the week of July 23, 2001, for the hearing in the instant docket. In Order No. 2001-532, the Commission stated that it recognized that the hearing in this matter may not be completed in one week; however, the hearing would commence on July 23, 2001, and the proceeding would be continued to a later date if necessary.

In its Motion to Reconsider the Commission's scheduling decision in Order No. 2001-532, NewSouth and the Cable Association explicate numerous reasons as to why the Commission should reject BellSouth's request for an expedited hearing on July 23, 2001. According to NewSouth and the Cable Association, the rejection of BellSouth's request for a hearing on July 23, 2001, will allow for the appropriate development of the issues in this docket.

First, NewSouth and the Cable Association incorporate in their Motion AT&T Communications of the Southern States, Inc.'s (AT&T) May 14, 2001, Memorandum and attachments, in response to BellSouth's request for an expedited hearing. NewSouth and

the Cable Association argue that AT&T's arguments are compelling and demonstrate that there is no reason to expedite the hearing in this matter.

Moreover, according to NewSouth and the Cable Association, BellSouth has not demonstrated a reason for the abbreviated opportunity for discovery and preparation which will result from the hearing commencing on July 23, 2001. NewSouth and the Cable Association indicate that in BellSouth's comments filed in Docket No. 2000-13-C, the Generic Proceeding to Address Performance Measures and Third Party Testing, BellSouth urged the Commission not to order its own third-party testing of Operational Support Systems (OSS) but to rely on the third-party testing being conducted in Georgia and Florida. NewSouth and the Cable Association opine that this Commission should not move forward with the hearing in this docket until Georgia and Florida have completed their reviews and that the Federal Communications Commission (FCC) will consider Georgia and Florida to be "anchor" states with respect to South Carolina. Therefore, the FCC will not review the South Carolina application until it has reviewed the applications from the anchor states.

NewSouth and the Cable Association also argue that under BellSouth's expedited schedule, the period of time allowed for discovery and hearing preparation is insufficient to comply with the basic requirements of Section 1-23-320(e) of the South Carolina Administrative Procedures Act. The volume of material filed by BellSouth thus far will limit the parties to this proceeding sufficient time to prepare for a hearing on July 23, 2001, according to NewSouth and the Cable Association.

The Motion to Reconsider Scheduling Decision also states that the time frame allowed under the present schedule does not permit the Commission an adequate amount of time to adequately review BellSouth's 271 application and its voluminous supporting documents in order to make a meaningful recommendation to the FCC. NewSouth and the Cable Association argue that every state where there has been a successful Section 271 application has involved an active review by a state commission lasting well in excess of a year.

In closing, NewSouth and the Cable Association state that fundamental fairness requires a sufficient opportunity for the parties to review and consider the Application and supporting materials. Additionally, NewSouth and the Cable Association opine that there is simply no good reason why the proceeding in the instant docket should be rushed; the result will be a decision, even if it is an endorsement of BellSouth's Application, that could not be persuasive with the FCC.

Letter from NuVox Communications, Inc.

On June 7, 2001, NuVox Communications, Inc. (NuVox) filed a letter requesting that the Commission reconsider its hearing date and procedural schedule it has established. According to NuVox, on May 16, 2001, BellSouth filed a compact disk with the Commission which contains 93 files totaling 214 megabytes of data. NuVox opines that by any account, measure, or comparison, the volume of BellSouth's filing is staggering. Moreover, NuVox points out that should a person petition to become a party to the instant docket on June 21, 2001, then that party would have eighteen days to

review BellSouth's testimony and exhibits, consistent with the procedural schedule set by the Commission, to file testimony on or before July 9, 2001.

NuVox continues by stating that anticipating that assumed parties in this Docket were provided with BellSouth's filing on May 16, 2001, the period of time between BellSouth's filing and the due date for testimony simply does not provide the parties, including the Staff, with adequate time to review the volume of testimony and exhibits. Finally, NuVox argues that BellSouth's May 16, 2001, filing does not include the performance measures data BellSouth will file with the Commission on or before June 18, 2001; NuVox believes this information will also be voluminous. Therefore, NuVox requests that the Commission reconsider the hearing date and procedural schedule it has established.

Letter from United Telephone Company of the Carolinas and Sprint Communications Company, L.P.

On June 11, 2001, the Commission received a letter from United Telephone Company of the Carolinas and Sprint Communications Company, L.P. (collectively, Sprint) wherein Sprint supported NewSouth and the Cable Association's Motion to Reconsider Scheduling Decision. In its letter, Sprint argued that the §271 proceeding is of great importance to the people of South Carolina and to the companies involved. Sprint also opined that the issues in this docket are complex, the filings are voluminous, and the Commission to some extent will be acting in reliance on the results being performed, but not yet completed and reported upon, in other states. In Sprint's opinion, there will not be sufficient time for discovery and adequate presentation of this important

case; due process requires more time and the adoption of a more considered pace. Sprint believes the Commission should consider the following issues when establishing a procedural and hearing schedule: the critical market entry issues which remain under consideration by the Commission at this time; the unresolved status of testing of BellSouth's Operational Support Systems; and the additional questions set out in Sprint's earlier Petition for Order Soliciting Comments on Proposed Hearing Schedule.

BellSouth's Letter of Intent to File a Response to any Motions and BellSouth's
Reply to NewSouth Communications' and South Carolina Cable Television
Association's Motion to Reconsider Scheduling Decision

In a letter dated June 8, 2001, BellSouth notified the Commission of its intent to file a Response to any Motions for Reconsideration filed by other parties in this proceeding. BellSouth argued the Motions for Reconsideration should be denied as BellSouth is prepared to move forward to prove to the Commission that it has taken all actions necessary to open local markets to competition in South Carolina in satisfaction of the requirements of Section 271 of the Telecommunications Act. Moreover, BellSouth opined that the parties' arguments have no merit and should not dissuade the Commission from its original decision. For example, BellSouth states that the bulk of the documents NuVox references in its letter are currently used in NuVox's business operations. Additionally, BellSouth states that other lengthy documents should be very familiar to NuVox, as they are documents developed in collaboration between the parties and BellSouth in Georgia to develop performance measures and third party testing. Furthermore, BellSouth states that it served all parties with a copy of its documents on

May 16, 2001, as a courtesy in order to allow the parties to have access to all relevant information for an additional amount of time prior to the hearing.

In its Reply, BellSouth contends that the procedural schedule set forth by the Commission provides all parties a meaningful opportunity to file testimony and to present live witnesses in support of their positions. BellSouth argues that the competitive local exchange carriers (CLECs) know that BellSouth is in compliance with the Act, and the CLECs are using procedural weapons to attempt to delay BellSouth's entry into the interLATA market and to deny South Carolina consumers the benefits of a truly competitive telecommunications market.

In the Discussion section of its Reply, BellSouth outlines several reasons the Commission should deny the Motion to Reconsider. First, BellSouth argues the Commission should deny the Motion because it does not present any new arguments or mistakes of law. BellSouth states that AT&T has already filed a response objecting to BellSouth's request that a hearing date be reserved for this proceeding. More specifically, BellSouth asserts that AT&T previously raised every substantive argument made in NewSouth's and the Cable Association's Motion, which is currently pending before the Commission. Moreover, BellSouth notes that the Commission did not find any of the objections in AT&T's Motion persuasive and the Cable Association and NewSouth have not presented any grounds upon which the Commission should reconsider its decision. Furthermore, BellSouth contends that given the Commission's obligation to comply with the law, BellSouth presumes that the Commission considered all due process implications of its schedule in its previous ruling.

Next, BellSouth argues the most compelling reason the Commission should proceed with the hearing as scheduled is the current state of competition in the local market in South Carolina. BellSouth cites data regarding access lines utilized by CLECs to support this contention. For example, BellSouth estimates that as of March 2001, CLECs served approximately 151,000 lines in South Carolina, which translates into approximately 9.4% of the local market. In support of its argument, BellSouth also cites references from the FCC which indicate, in BellSouth's opinion, that increased competition in the local market exists in South Carolina.

BellSouth asserts that the Commission can and should rely on commercial usage. According to the Reply, BellSouth will submit to the Commission performance data evidencing both commercial usage of BellSouth's OSS and the level of performance with which BellSouth provides CLECs access to its OSS. In large part, BellSouth will prove its compliance with Section 271 through commercial usage and performance data.

Next, BellSouth argues the Commission should not wait on the completion of the Florida test. Instead, BellSouth encourages the Commission to rely on the results of the Georgia test. BellSouth states numerous reasons in its Reply as to why the Commission should rely on the results of the Georgia test. According to BellSouth, one reason the Commission should rely on the Georgia test is, like the New York test, KPMG was an independent tester; conducted a military-style test, made efforts to place itself in the position of an actual market entrant; and made efforts to maintain blindness when possible. Furthermore, the Georgia test covered over 1,170 test criteria and the Georgia test included significant opportunity for CLEC input. BellSouth believes the Georgia test

is thorough and robust and will provide the Commission ample evidence of BellSouth's compliance with the competitive checklist for those areas for which BellSouth does not have commercial usage in South Carolina.

Moreover, BellSouth asserts that the Commission's schedule provides all parties due process. First, BellSouth states that although its filing was voluminous, the majority of the documents submitted by BellSouth are ordering guides and other public material that are generally available to CLECs on the Internet and are used by CLECs to do business with BellSouth; therefore, because CLECs must be familiar with such material in order to operate their businesses, few documents and very little information in BellSouth's filing should be unfamiliar to NewSouth and the Cable Association. Next, BellSouth argues that NewSouth has been involved in Section 271 proceedings in many states, including Alabama, Georgia, Florida, Louisiana, and Mississippi. Moreover, according to BellSouth, the CLEC reply dates for all of these states occur before the hearing in this docket – July 23, 2001. Therefore, NewSouth should be able to prepare for the scheduled hearing, as BellSouth's application in this docket is almost identical to applications filed in other states.

Finally, BellSouth argues that there is no need to delay the hearing in this matter as the time provided to the parties in this case is comparable to what is customarily granted. As the Commission has granted the parties in this proceeding seven weeks to prepare for the July 23, 2001, hearing, BellSouth is of the opinion that it would be improper to schedule a hearing date after July 23, 2001. BellSouth believes the current

schedule provides ample time for each party to present its position on BellSouth's application and that it is in the public interest to commence the hearing on July 23, 2001.

Findings of Fact

1. On May 16, 2001, BellSouth filed a Notice of Intent to file a Section 271 Application with the Federal Communications Commission at the South Carolina Public Service Commission. Additionally, on May 16, 2001, BellSouth filed an original and one paper copy of twenty-four CD-ROM copies of the direct testimony and exhibits of John Ruscilli, Keith Milner, David Scollard, Ken Ainsworth, Ronald Pate, Al Heartley, Jerry Latham, Thomas Williams, Al Varner, and Wayne Gray.

2. BellSouth filed a Motion to Accept Copies on CD-ROM in lieu of Paper Copies with the Commission on May 16, 2001. BellSouth should be allowed to file its testimony and associated exhibits in a PDF format on CD-ROM due to the magnitude of its testimony and exhibits.

3. On June 4, 2001, the Commission issued Order Number 2001-532 wherein the Commission granted BellSouth's request to set the week of July 23, 2001, for the hearing in the instant docket.

4. Also, on June 4, 2001, the Commission issued Order Number 2001-533. This Order established prefiling deadlines for the instant proceeding.

5. On June 6, 2001, NewSouth and the Cable Association filed a Motion to Reconsider the Scheduling Decision issued in Commission Order Number 2001-532.

6. On June 7, NuVox also requested that the Commission reconsider the hearing date and procedural schedule it established in Order Numbers 2001-532 and 2001-533.

7. Sprint also filed correspondence with the Commission on June 11, 2001, wherein Sprint supported NewSouth's Motion for Reconsideration.

8. BellSouth filed a Reply to NewSouth and the Cable Association's Motion to Reconsider Scheduling Decision on June 11, 2001, with the Commission.

9. While BellSouth's filing of testimony and associated exhibits in this docket is voluminous, it appears that the majority of the documents submitted by BellSouth are ordering guides and other public material that are generally available to CLECs on the Internet and are used by CLECs to do business with BellSouth. Hence, most of the documents filed by BellSouth should be familiar to CLECs. Therefore, the commencement of a hearing in this docket should begin on July 23, 2001.

10. Additionally, the hearing in this docket should be bifurcated due to the number and complexity of issues involved in the instant proceeding. Bifurcation of the hearing should allow the parties in the case the opportunity to thoroughly analyze, present, and cross-examine witnesses regarding the issues in this case.

Conclusions of Law and Discussion

1. We find BellSouth's request to file one (1) original and one (1) paper copy of all testimony and exhibits filed in this docket, along with the additional twenty-four (24) copies of all such testimony and exhibits on CD-ROM reasonable. BellSouth shall file one (1) original and one (1) paper copy of all testimony and associated exhibits, along

with an additional twenty-four (24) copies of all such testimony and associated exhibits in a PDF format on CD-ROM. Due to the size of the testimony, electronic filing provides an innovative approach to filing important and essential documents in this matter. We strongly encourage other parties in this Docket to also file their documents (i.e., testimony and associated exhibits) electronically.

2. Regarding the Motion to Reconsider Scheduling Decision filed on behalf of NewSouth and the Cable Association and the letters in support of the Motion from NuVox and Sprint, we agree that the testimony is voluminous. However, it appears that many of the documents filed by BellSouth are copies of manuals and electronic interfaces such as Telecommunications Access Gateway (TAG) and Local Exchange Navigation System (LENS), which should be familiar to CLECs as these programs are utilized by CLECs to do business with BellSouth. The CLECs familiarity with these documents should minimize the workload of the parties thereby making the testimony volume and case preparation less burdensome.

3. In recognition of the importance of this matter to the various parties, and to provide for an improved and thorough process, the Commission grants reconsideration of the scheduling decision in-part. The hearing shall be bifurcated so that the issues in this case can be analyzed thoroughly. The first part of the hearing shall proceed as scheduled on July 23, 2001. The second part of the hearing shall commence on August 27, 2001. During the July 23, 2001 hearing, BellSouth is directed to organize its direct testimony to address the entire fourteen-point checklist generally and specifically, with the exception of the testimony of Varner. Responsive testimony by other parties,

including the Commission Staff, shall be given in response to BellSouth's direct testimony.

4. Mr. Varner's testimony shall be presented at the conclusion of the testimony of the fourteen-point checklist. Mr. Varner's testimony is eighty-six pages in length and addresses Interim Service Quality Measurements, BellSouth's Response to Third Party Testing, and BellSouth's Self-Effectuating Enforcement Mechanism (SEEM) or Penalty Plan. BellSouth shall focus on Third Party Testing and the Penalty Plan from Varner's testimony during the July hearing.

5. Performance data and measures and information regarding the Section 271 process in Georgia shall be presented during the August hearing. It is anticipated that Mr. Varner will complete the remainder of his testimony dealing with performance measures, if his testimony is not concluded during the July 23, 2001, proceeding. Parties are strongly encouraged to provide detailed arguments, analysis, data and exhibits during the August hearing regarding differences in Section 271 Georgia and Florida third party testing and performance measures.

6. Moreover, regarding the prefiling dates for testimony and exhibits for the August 27, 2001 proceeding, BellSouth shall prefile its testimony and exhibits on or before **July 25, 2001**. Additionally, the Commission Staff and intervenors shall prefile testimony and exhibits on or before **August 13, 2001**. (Material may be post-marked on these dates.) Also, any rebuttal testimony and exhibits shall be prefiled on or before **August 20, 2001**, and any surrebuttal testimony and exhibits shall be prefiled on or

before **August 23, 2001**. (Material must be in the offices of the Commission and in the hands of the parties on these dates.)

IT IS THEREFORE ORDERED THAT:

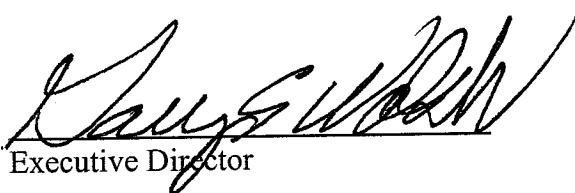
1. BellSouth's Motion to Accept Copies on CD-ROM in lieu of Paper Copies is granted.
2. NewSouth and the Cable Association's Motion to Reconsider Scheduling Decision and NuVox and Sprint's request to reconsider the prior scheduling decision is granted in part as addressed above in this Order. The hearing in this matter shall be bifurcated and handled in the manner outlined above in this Order.
3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:


Executive Director

(SEAL)